

## REMARKS

### Claim Amendments

The amendment of claim 28 finds support in paragraph 111 of the specification.

New claim 39 finds support in paragraph 133 of the specification.

New claims 41-45 find support in original claims 30-34.

### Restriction Requirement

In response to the Restriction Requirement, Applicants hereby elect the invention encompassing claims 28-36, drawn to the polypeptide of SEQ ID NO:31 for further prosecution on the merits. This election is with traverse.

With regard to the traversal, Applicants note that the Examiner states at the bottom of page 2 of the action that inventions 1-372 are directed to related products, and that related inventions are distinct if (1) the inventions are not capable of use together, (2) the inventions do not overlap in scope, and (3) the inventions as claimed are not obvious variants. Applicants respectfully note that the polypeptide of SEQ ID NO:31 (claim 28) and the domains of SEQ ID NO:31 recited in new claims 41-45 clearly overlap. Each of the domains of claims 41-45 is encompassed within SEQ ID NO:31. Accordingly, each of the three provisos provided by the Examiner has not been met. As such, Applicants respectfully request reconsideration and rejoinder of the domains of SEQ ID NO:31, along with the amino acid sequence of SEQ ID NO:31.

In addition, Applicants request the following amendments to the restriction requirement (shown in tracking). Applicants' comments on the requested amendments follow below.

Inventions 1-157: Claims 1-20, and 22-27 and 38, drawn to a nucleic acid comprising a polynucleotide encoding one catalytic domain of a polyketide synthase (121 domains) or a homolog or complement thereof, a module (27 modules), or an entire open reading frame (9 ORF) or a homolog or complement thereof, vector, host cell, and method of making the polypeptide, and cosmids, classified in class 435, subclass 183. Applicants are required to elect one from the following: (a) one catalytic domain define by its amino acid sequence or the nucleic acid encoding said domain, (b) one module defined by its amino acid sequence or the nucleic acid encoding said module, or (c) one nucleic acid

sequence selected from SEQ ID NO: 22, 24, 26, 28, 30, 32, 34, 36, and 38. ~~If one of (c) is elected, no fragments, homology or hybridization language will be examined with the elected subject matter.~~

Inventions 158-186: Claim 21~~Claims 21 and 38~~, drawn to a nucleic acid sequence comprising one of SEQ ID NOs: 3, 5, 7, 9, 11, 13, 15, 17, 20, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76 and 78, and homologs and compliments thereof, or a nucleic acid sequence comprising a polynucleotide encoding one of the amino acid sequences of SEQ ID NO: 2, 4, 6, 8, 10, 12, 14, 16, 19, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, and homologs and compliments thereof, classified in class 536, subclass 23.2;

Inventions 187-343: Claims 28-36, drawn to a polypeptide comprising of a catalytic domain of a polyketide synthase (121 domain) and homologs thereof, a module, or an entire open reading frame (9 ORF), classified in class 435, subclass 183. Applicants are required to elect one from the following: (a) one catalytic domain define by its amino acid sequence, (b) one module define by its amino acid sequence, or (c) one polypeptide sequence selected from SEQ ID NO: 21, 23, 25, 27, 29, 31, 33, 35, and 37. ~~If one of (c) is elected, no fragments, homology or hybridization language will be examined with the elected subject matter.~~

Inventions 344-372: Claim 37, drawn to a polypeptide comprising of one of the amino acid sequence of SEQ ID NO: 2, 4, 6, 8, 10, 12, 14, 16, 19, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77.

With regard to inventions 1-157, Applicants find that as claim 38 is directed to methods of making polypeptides, and because such methods are included by the Examiner in the description of inventions 1-157, claim 38 should be included in this group.

The Examiner notes that fragments, homologs and hybridizing polynucleotides will not be examined with the elected subject matter in inventions 1-157 or 187-343. As the Examiner has not provided any basis for making such a statement, and because fragments, homologs and hybridizing polynucleotides are patentable subject matter, such subject matter should be included in both groups of inventions.

RESPONSE TO RESTRICTION REQUIREMENT  
AND PRELIMINARY AMENDMENT  
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As the cosmids of claims 25-27 were not specifically indicated as being included among inventions 1-157, they should be added to the description of these inventions.

The Examiner appears to have omitted the polynucleotides recited in claim 21(a), the homologs of claim 21(c), and the compliments claim 21(d). Therefore, they should b added to inventions 158-186.

In light of the above, Applicants believe that this application is now in condition for examination on the merits. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

In the event any variance exists between the amount of fees paid upon filing this document and the Patent Office charges for filing this document, including any fees required under 35 CFR 1.136 for any necessary extension of time to make the filing of this document timely, please charge or credit the difference to Deposit Account No. 13-2725. Further, if these papers are not considered timely filed, then a request is hereby made under 37 CFR 1.136 for the necessary extension of time.

Respectfully submitted,  
MERCHANT & GOULD, P.C.

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Date

/Drew Hissong/

Drew Hissong  
Registration No. 44,765

P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
Telephone No. (202) 326-0300  
Facsimile No. (202) 326-0778

**23552**

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